

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4638 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?
- =====

RR MACKWAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4638 of 1988
Mr. Shivang J. Shukla for MR YN OZA for
Petitioners.
Mr. Sudhir Mehta, AGP for Respondent No. 1-3
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CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 01/08/2002

ORAL JUDGEMENT

The petitioners, in this petition, under Article 226 of the Constitution of India, have prayed for mandatory relief directing the respondents to grant the petitioners deemed date of promotion from the date when their juniors came to be promoted from the cadre of

Junior Clerk and further to hold that it was not compulsory for the petitioners to appear in the examination since they have been appointed before first notification of 1975 which made passing of examination compulsory for promotion. The petitioners have further sought the mandatory relief directing the respondents that if the petitioners pass the departmental examination they should be given the deemed date from the date when their juniors came to be promoted because the petitioners were not offered in-service-training which would have made them fit to appear in the examination. The petitioners have further prayed for release of selection grade retrospectively which has been stopped from 1981. The petitioners have also challenged the vires of Rule 5(1)(a) of 1975 Notification on the ground that the said Rule is ultra vires the Constitution.

2. It is the case of the petitioners that they have put up at least 20 years of service and all of them were recruits before 1975 as typists. They were appointed as typists and remained as typists even after putting up this length of service. It is further stated by the petitioners that for the first time the Government of Gujarat, vide its Notification of 1971 merged the cadre of typists and clerks (Jr.Clerks) and common seniority list was prepared in the year 1971 and for the said merged cadre promotional post was the post of Senior Clerk. The criteria laid down for promotion of Senior Clerk was seniority-cum-merit and it was also subject to passing of the departmental examination. It was further stated by the petitioners that even after merger of cadre the respondents filled up the post of Senior Clerks from amongst the Junior Clerks and typists and though petitioners are much senior to them they were left out. It was for the first time in 1975 the Government has issued notification by which the examination for promotion was made compulsory for even typists and that it was done by amending the notification issued in 1970. The petitioners have further submitted that the Government had no power to change the service conditions of the petitioners to the detriment of the employees and that too behind their back without affording any opportunity to them. The petitioners have also raised the grievance that even after their cadre of typists was merged into Junior Clerks they were not selected for joining in in-service-training for passing the examination till 1977. Even after making a provision in 1977 no steps were taken by the respondents till 1981 and the petitioners were not sent for in-service training. This was started as late as in 1988. It was therefore submitted that petitioners were not given adequate

opportunities and the employees who were similarly situated were given such opportunity so as to enable them to pass the examination. It was therefore submitted that the action of the respondents was highly prejudicial and discriminatory in nature which is violative of Articles 14 and 16 of the Constitution of India. Under the above circumstances, the petitioners are compelled to approach this Court seeking mandatory directions from this Court which are stated hereinabove.

3. The petition was admitted by this Court on 8-9-1988 and affidavit-in-reply was filed on behalf of the respondents on 6th April 1989. In the affidavit-in-reply, the respondents have raised contention that all the petitioners were originally appointed to the post of typist under the establishment of the respondents. It was further stated that original cadre of typist and the cadre of Junior Clerk were separately maintained and there had been no promotional avenue available to the post of Senior Clerk. Subsequently as per the decision taken in the meeting of the Joint Council on 12-1-1971, it was resolved by the Government of Gujarat that joint cadre of typist and Junior Clerk be maintained and also common seniority list for the Junior Clerk and typist be prepared for the purpose of promotion to the next higher post. On merger of post of typist in the cadre of Junior Clerk, the recruitment rules for promotion to the post of Senior Clerk were issued by Notification dated 13-12-1973. The Gujarat Government Presses, Printing and Stationery Department (Senior Clerk) Recruitment Rules, 1973 provide that the appointment to the post of Senior Clerk in each of the Government Presses and in the office of the Director, Government Printing and Stationery shall be made by promotion of a person of proved merit and efficiency from amongst the Junior Clerks and English or Gujarati Typists on the basis of seniority. Rule 3 of the said Rules provide for eligibility for appointment by promotion to the post of Senior Clerk and under the said rules the persons shall have to pass the departmental examination in accordance with the rules made by the Government in that behalf, unless he has been exempted by such rules for passing said examinations and has been initially recruited in accordance with the said procedure of recruitment or his services have been regularised through the Departmental or District Selection Committee.

4. It was further stated in the affidavit-in-reply that the State Government has framed Gujarat Printing and Stationery Department (Junior Clerk, Clerk-cum-Typist, Clerk-cum-Cashier, Cashier-cum-Clerk, Storekeeper-cum-Film

Recorder, Despatcher (of Government Central Press only), Time-keeper, Storekeeper of Government Presses, Accountants, Senior Clerks and Junior Auditors) Examination Rules, 1970. Under the said rules, the word 'Clerk' is defined in Rule 2(c). rule 4 provides that in order to be eligible for promotion to the post of Senior Clerk or Accountant or Storekeeper or Junior Auditor, a Clerk shall have to pass the Senior Clerk examination within a period of 6 years from the date of his appointment as Clerk or 3 years from the appointed date whichever is later, unless he passed the Lower Standard Departmental Examination under the old rules or unless he has been exempted from passing the Lower Standard Departmental Examination under the old rules of the Senior Clerk's examination. Rule 5 provides that the examination required to be passed under the sub-rule (2) or (4) of Rule 3 shall have to be passed in not more than two chances within the specified period.

5. The Government has thereafter issued Notification dated 3-1-1973 amending the examination rules of 1970 by which, along with other amendments, sub-rule (2) of Rule 3 substituted and accordingly every person who was appointed as Clerk on or after the appointed date, either by promotion or otherwise, should be required to pass the Clerk's examination within a period of 3 years from the date of his regular appointment as Clerk. The examination rules of 1970 were further amended by notification dated 17.2.1975 and by virtue of the said amendment, within the purview of definition 'Clerk' the English and Gujarati typists were included and the Rules of 1970 had been made applicable to the English and Gujarati typists working in the setup of the respondent authorities.

6. In view of these rules, notifications as well as amendments, it was urged by the respondents that the petitioners who were appointed and working as English and Gujarati typists had no promotional avenues to the post of Senior Clerk and only after merger of cadre and framing the Senior Clerks Recruitment Rules of 1973, the promotional avenue to the post of Senior Clerk had been made available to the Gujarati and English typists. It was further submitted that the eligibility criteria for promotion to the post of Senior Clerk has been laid down in the said recruitment rules and accordingly the petitioners were required to pass the departmental examination, as per the examination rules of 1970 as amended from time to time. Since the petitioners have not passed the said examination, they have not been promoted to the post of Senior Clerk. It was further

submitted that the petitioners have no legal right to claim promotion to the post of Senior Clerk without making themselves eligible for promotion to the said post and in this view of the matter, it was submitted by the respondents that the petition should be dismissed with costs.

7. The petitioners have filed their affidavit-in-rejoinder which was placed on record only in June 2002. In the said affidavit-in-rejoinder the stand taken by the respondents was objected to by the petitioners and it was specifically stated therein that the respondents have given selection grade to 4 Junior Clerks eventhough they had not passed the departmental examination and at the same time the respondents were implementing the said rules strictly qua the petitioners. The petitioners have further pointed out the case of one Typist namely Smt. I.R. Sajnani who was given deemed date of promotion although she had not passed the examination. The petitioners have therefore submitted that the action of the respondents was thoroughly illegal and violative of Articles 14 and 16 of the Constitution of India because they were applying different yardsticks to same class of people and thereby treating equals as unequals.

8. Heard Mr. Shivang J. Shukla appearing on behalf of Mr. Y.N. Oza, Senior Counsel for the petitioners and Mr. Sudhir Mehta, the learned AGP appearing for the respondents. I have considered the rival submissions made on behalf of the respective parties. I have also gone through the facts stated and averments made in the petition as well as the affidavit-in-reply and also the affidavit-in-rejoinder on behalf of the petitioners. It is an undisputed fact that the petitioners have not passed the departmental examination which was required to be passed in view of the Gujarat Government Presses, Printing and Stationery Dept. (Senior Clerk) Recruitment Rules, 1973. The requisite criteria for eligibility for appointment or promotion to the post of Senior Clerk was seniority-cum-merit and along with that the departmental examination was also required to be passed. It is not the case of the petitioners that they were given exemption from clearing the departmental examination. Simply because they were appointed after 1975, it cannot be said that the rules which were framed in 1973 were not applicable to them. Hence, unless and until departmental examination was cleared by the petitioners, they were not to be considered for getting promotion to the post of Senior Clerks even if their cadre was merged with that of the Junior Clerks. With regard to the discrimination of

the petitioners in not granting promotion on the ground that they have not cleared the departmental examination and yet typists were given such deemed date of promotion, this Court has raised a specific query to the learned AGP, and it was clarified that though the deemed date of promotion was given to the typist it was subsequently withdrawn and other instances which were quoted in the affidavit-in-rejoinder were of Junior Clerks and in this view of the matter there was no discrimination, and there was no question of treating equals as unequals. Since the respondent authorities have acted in accordance with the rules, notifications and amendments and since there was no irregularity or infirmity committed by them in giving promotions to the deserving candidates and in not giving promotions to the petitioners, this Court does not think it proper to exercise its writ jurisdiction under Article 226 of the Constitution, as this Court is of the view that there seem to be no injustice caused to the petitioners and hence the relief prayed for in this petition cannot be granted.

9. Having regard to the facts and circumstances of the case and also having regard to the Government policy expressed in the rules, notifications etc., which are elaborately mentioned in the affidavit-in-reply, I am of the view that the petitioners have not made out any case which calls for interference by this Court in the decision making process of the respondents by not giving deemed date of promotion or not granting other reliefs as prayed for in the petition. This Special Civil Application is, therefore, rejected. Rule is discharged with no order as to costs.

rmr. [K.A. Puj, J.]